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OFFICE OF THE ATTORNEY GENERAL



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MAR 29 1982

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Executive Director
Alabama Board of Pardons and Paroles
750 Washington Avenue, Suite 312
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Pardon and Parole Board -
Paroles - Revocation of Paroles

Upon a determination by the Board of Pardons and Paroles that a parole previously granted was granted in contravention of the Alabama statutes applicable to parole, the parole previously granted is null and void.

Dear Mr. Williams:

In a formal opinion issued by this office on April 17, 1981, a determination was made that the Alabama Board of Pardons and Paroles had the power and authority to rescind, revoke, nullify, or otherwise withdraw and make null and void a grant of parole which had been legally issued and executed. It is my understanding that upon receipt of the opinion of April 17, 1981, the Alabama Board of Pardons and Paroles executed a detainer warrant in order that the parolee might be returned from another state where the parolee was serving a sentence.

It is my opinion that the opinion issued on April 17, 1981, needs further clarification in light of an Executive Agreement entered into between the Governor of the State of

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Alabama and the Governor of the State of Georgia. On May 8, 1981, the Governor of the State of Georgia formalized the Executive Agreement which provides that the State of Georgia would return to the State of Alabama Richard Mark Ellard for a determination as to whether or not the statutory provisions governing the Alabama Board of Pardons and Paroles had not been complied with in that the Alabama Board of Pardons and Paroles did not have within its files sufficient information to make a full and complete determination as to whether or not the person should be paroled. Specifically, the Alabama Board of Pardons and Paroles was to make a determination as to whether or not the Board had sufficient information to ascertain fully and completely the nature of the crime committed by Richard Mark Ellard, whether or not the Board had insufficient information to consider fully and completely the past criminal record of Richard Mark Ellard and whether or not the Board had sufficient information to adequately consider the probability that Richard Mark Ellard was about to lapse into criminal ways in that Richard Mark Ellard had threatened to harm the children of the surviving victim of his crimes. It is my understanding that the Governor of the State of Alabama and the Governor of the State of Georgia have agreed that the Executive Agreement entered into by both parties will now become effective.

The Executive Agreement entered into between the Governors of the two states has not been put into effect due to certain legal action instituted by Richard Mark Ellard in the courts of the State of Georgia. On September 16, 1981, the Superior Court of Fulton County, Georgia issued an Order that provided that the Executive Agreement entered into between the two states was valid and not violative of the plaintiff's constitutional rights. On February 24, 1982, the Supreme Court of Georgia affirmed the Order issued by the Superior Court of Fulton County.

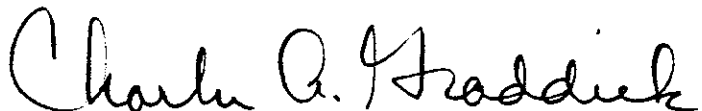
It is my opinion that the proper procedure to be followed by the Alabama Board of Pardons and Paroles upon the return of Richard Mark Ellard to the State of Alabama is that the Board should hold a hearing, receive testimony and then make a determination as to whether or not its previously granted parole was executed without full compliance with the statutes of the State of Alabama relating to parole. Section 15-22-40,

Code of Alabama 1975 provides that any parole ordered or made contrary to the provisions of the laws of the State of Alabama relating to parole shall be null and void and shall have no force or effect. Should the Board make a determination that the parole previously granted was ordered or made contrary to the laws of the State of Alabama relating to parole, then the previously granted parole is null and void.

It is my opinion that the proper procedure for this determination is not only that of a revocation, but is also a determination as to whether or not the statutes of the State of Alabama relating to parole were followed in that sufficient information upon which to make a decision was not submitted to the Board. However, it is further my opinion that this entire procedure should be constructed in such a manner so as to provide due process rights to the parolee. The Supreme Court of the United States has held that due process attaches to a parole revocation and it is my opinion that the procedure in this matter should closely follow the due process mandates outlined in Morrissey v. Brewer.

I hope that this information fully and completely explains the prior opinion of April 17, 1981.

Sincerely yours,

A handwritten signature in cursive script, reading "Charles A. Graddick". The signature is written in dark ink and is positioned above the printed name and title.

CHARLES A. GRADDICK
ATTORNEY GENERAL